

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0001, Jennifer Kennett v. Meeting House Way, LLC d/b/a Kidseables, LLC, the court on November 15, 2005, issued the following order:

The appellant, Jennifer Kennett, appeals an order of the district court finding that, although the parties entered into a business relationship, there was no meeting of the minds. She contends that the trial court erred in failing to award her damages based on unjust enrichment and promissory estoppel. We affirm.

The formation of a contract requires a meeting of the minds as to the terms thereof. Fleet Bank – NH v. Christy’s Table, 141 N.H. 285, 287 (1996). Whether there is a meeting of the minds is a question of fact to be determined by the trial court; we will not overturn that determination unless the findings are clearly erroneous. Id. at 288. In this case, the trial court found that the “parties entered into a business relationship without full knowledge . . . of what this relationship would be.” This finding is supported by the record. Both parties agree that the final terms of the contract had not been approved at the time that the business relationship ceased.

Even if we assume that the issues of promissory estoppel and unjust enrichment were properly raised before the trial court, they do not alter our conclusion that the trial court did not err. “The award of damages is a ‘factually driven’ determination.” Jackson v. Morse, 152 N.H. 48, 51 (2005). A single measure of damages is not applicable to every promissory estoppel claim; rather, the appropriate measure varies according to the facts and equities of the case. Id. Restitution is an equitable remedy; it may be awarded only if there is unjust enrichment and the party sought to be charged has wrongfully secured a benefit or passively received one which it would be unconscionable to retain. In the Matter of Haller & Mills, 150 N.H. 427, 430 (2003). In this case, the trial court found that both parties performed to their respective detriment. This finding is supported by the record. Therefore, in light of the facts and the equities of the case, the trial court did not err by ruling that neither party was entitled to an award of damages.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**